

2. On November 23, 1983, Caldwell identified the Plaintiffs as the individuals responsible for Dewitt Duckett's death and later testified in front of the Grand Jury and at Trial in accordance with the identifications he made. *See* Exhibit 2, excerpts of Caldwell Grand Jury and Trial Testimony (NK DEF 019370-019385; NK DEF 008668-70).

3. On January 20, 2022, Mr. Caldwell was served by Individual Defendants' Counsel's non-attorney agent with a subpoena for a deposition to take place via zoom at the offices of undersigned counsel on February 1, 2022, at 10:00 a.m. *See* Exhibit 3, Caldwell deposition Subpoena and Proof of Service.

4. On February 1, 2022, Mr. Caldwell appeared, on time, for the deposition but began to fall asleep shortly after Individual Defendants' examination began. *See* Exhibit 4, Transcript of Caldwell Deposition 19:2-20:15.

5. Mr. Caldwell informed the parties that he had not slept in two or three days. Ex. 4 11:19-12:4.

6. The parties agreed that the deposition should be suspended until the following morning at 10:00 a.m. at the same location so that Mr. Caldwell could get some rest. Ex. 4 19:17-22:5.

7. Mr. Caldwell confirmed the time and location of the deposition before departing.

8. On February 2, 2022, counsel for Plaintiff, undersigned counsel and a court reporter again appeared at the designated time for the continuation of Mr. Caldwell's deposition. However, Mr. Caldwell failed to appear. The parties waited approximately an hour and made several attempts to contact Mr. Caldwell to determine the reason for his absence. *See* Ex. 5, Statement on the Record 4:7-7:6.

9. To date, Mr. Caldwell has not returned any of undersigned counsel's phone calls regarding his absence.

10. This Court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." Fed. R. Civ. P. 45(g).

11. Therefore, Defendants seek a rule to show cause against Mr. Caldwell for his failure to appear for the continuation of his deposition scheduled on February 2, 2022.

WHEREFORE, Defendants request that this Court enter an order to show cause why John Caldwell should not be held in contempt of court for his failure to comply with the subpoena issued to appear at his deposition, and for such other relief as this Court may deem appropriate.

DATE: February 18, 2022

Respectfully Submitted,

/s/ Mayer Engelsberg

Mayer Engelsberg Bar No. 21105

Avi T. Kamionski, Bar No. 20703

Shneur Nathan, Bar No. 20707

Michael J. Elliker Bar No. 20810

NATHAN & KAMIONSKI LLP

575 S. Charles Street Suite 402

Baltimore, MD 21201

(312) 612-1928

(312) 448-6099

akamionski@nklawllp.com

snathan@nklawllp.com

mengelsberg@nklawllp.com

melliker@nklawllp.com

*Attorneys for Donald Kincaid, Bryn Joyce,
& John Barrick*

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that I have caused true and correct copies of the above and foregoing to be served on all counsel of record via to the Court's CM/ECF system, in accordance with the rules of electronic filing of documents, February 18, 2022.